THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.14100 OF 1996

BETWEEN:

Bolleni Sankaraiah Naidu and others .. Petitioners

And

The Special Court under A.P.
Land Grabbing (Prohibition) Act and another .. Respodents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.14100 OF 1996

O R D E R (Per the Hon'ble Sri Justice T.Ch.Surya Rao)

The short question that squarely falls for determination in the instant writ petition is the question of jurisdictional issue.

2. Sri Ankala Parameswari Temple represented by its Executive Officer filed the application in L.G.C.No.47/1995 before the Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad. It is alleged *inter alia* that the respondents therein who are the writ petitioners herein committed an act of land grabbing and not only that but also set up false title to the property. That application was resisted on the main premise among other grounds that the Special Court had no jurisdiction to entertain such an application.

3. On the above pleadings, the Special Court framed following issues:

1. Whether the applicant temple is the owner of the application schedule property?
2. Whether the rival title set up by R-1 is true and valid?
3. Whether the respondents are land grabbers within the meaning of Section 2(d) and 2(e) of the Act?

4. To what relief?

4. Surprisingly no issue has been framed on the question of jurisdiction. Since it is a case of jurisdiction over the subject matter, it can be adverted to notwithstanding the fact that an issue in regard thereto has not been framed by the Special Court, more so, *inter alia* in its judgment when the Special Court answered that question in the negative.

5. The property in question was purchased under a registered sale deed dated 7.6.1925. The original of the document was filed in this case and marked as Ex.B-8 and Ex.A-1 is the registration extract. Both the documents are one and the same. A perusal of the recitals mentioned in the said document would in our considered view, answer the question in controversy i.e., the jurisdictional issue. Obviously, the land in dispute was purchased under this document by one Bollini Siddappa Naidu son of Lakshmi Naidu in the capacity of Dharmakarta of the temple in question. The consideration for the land was passed, as could be seen from the recitals, from the funds of the temple. The document further recites that the land was put in possession of the Dharmakartha with a specific covenant that he and his successors in interest could enjoy the property and render services to the temple by performing nitya dhupa deepa naivadyam. The writ petitioners are admittedly the successors of the quondam Dharmakartha by name Siddappa Naidu. Thus it is obvious that the land in dispute has been in their occupation from their forefathers. When these facts emanating from the record are clear and unambiguous,

whether they vest the necessary jurisdiction to the Special Court or not, is the next question.

6. The learned Special Court having extracted the definition of land grabbing enjoined under Section 2(e) of the Act, has not properly considered the same and on the other hand, misread the same. The definition of 'land grabbing' may profitably be excerpted hereunder for brevity and better understanding of the matter:

> ***"land grabbing"*** means every activity of grabbing of any land (whether belonging to the government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation of unauthorized structures; and the term "to grab land" shall be construed accordingly;

7. The requirements which are necessary for giving the necessary jurisdiction to the Special Court or the Special Tribunal, as the case may be are that there must be illegal taking possession of the property in question and that taking possession must be without any lawful entitlement thereto and it was with a view to perform the said acts enumerated *inter alia* in the definition. None of the above ingredients has been satisfied in the instant case. Obviously possession was with the writ petitioners since the time of their forefathers, having been inducted under Ex.B-8. The initial possession of the land was not without any lawful entitlement, nor was it a case of taking

illegal possession. That itself takes away the jurisdiction of the Special Court.

8. Without entering into the merits of the case and without adverting to rival contentions set forth in the instant case and in fact such an attempt cannot legitimately be made, since it touches the jurisdictional issue, the writ petition could be disposed of solely and precisely on the jurisdictional issue, leaving it open to the parties to work out their remedies elsewhere.

9. For the above reasons, the writ petition is allowed. In the light of the observations made *inter alia* in the order, the impugned judgment dated 4.6.1996 passed by the Special Court in L.G.C.No.47/95, is hereby set aside. No order as to costs.

10. Petitioners are entitled to the amount they have deposited pursuant to the orders of this court while granting stay, without prejudice to the respective contentions of the parties.

T.CH.SURYA RAO,J

G.CHANDRAIAH,J

AVS
DATE:04.07.2006